

§ 1206.360 What records must I keep to support my calculations of royalty or fees under this subpart?

If you determine royalties or direct use fees for your geothermal resource under this subpart, you must retain all data relevant to the determination of the royalty value or the fee you paid. Recordkeeping requirements are found at part 1212 of this chapter.

(a) You must be able to show:

(1) How you calculated the royalty value or fee you reported, including all allowable deductions; and

(2) How you complied with this subpart.

(b) Upon request, you must submit all data to ONRR. You must comply with any such requirement within the time ONRR specifies.

§ 1206.361 How will ONRR determine whether my royalty or direct use fee payments are correct?

(a)(1) The royalties or direct use fees that you report are subject to monitoring, review, and audit. The ONRR may review and audit your data, and ONRR will direct you to use a different measure of royalty value, gross proceeds, or fee, whichever is applicable, if it determines that the reported value, gross proceeds, or fee is inconsistent with the requirements of this subpart.

(2) If ONRR directs you to use a different royalty value, measure of gross proceeds, or fee, you must either pay any royalties or fees due (together with interest computed under § 1218.302 of this chapter) or report a credit for or request a refund of any overpaid royalties or fees.

(b) When the provisions in this subpart refer to gross proceeds either for the sale of electricity or the sale of a geothermal resource, in conducting reviews and audits ONRR will examine whether your sales contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you for the geothermal resource or electricity. If ONRR determines that a contract does not reflect the total consideration, or the gross proceeds accruing to you under a contract do not reflect reasonable consideration because of misconduct by or between the contracting parties, or because you otherwise have

breached your duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, ONRR may require you to increase the gross proceeds to reflect any additional consideration. Alternatively, for Class I leases, ONRR may require you to use another valuation method in the regulations applicable to dispositions other than under an arm's-length contract. ONRR will notify you to give you an opportunity to provide written information justifying your gross proceeds.

(c) For arm's-length sales, you have the burden of demonstrating that your contract is arm's length.

(d) ONRR may require you to certify that the provisions in your sales contract include all of the consideration the buyer paid you, either directly or indirectly, for the electricity or geothermal resource.

(e) Notwithstanding any other provision of this subpart, under no circumstances will the value of production for royalty purposes under a Class I lease where the geothermal resources are sold before use be less than the gross proceeds accruing to you.

(f) Gross proceeds for the sale of electricity or for the sale of the geothermal resource will be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract.

(1) Absent contract revision or amendment, if you fail to take proper or timely action to receive prices or benefits to which you are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) Contract revisions or amendments you make must be in writing and signed by all parties to the contract.

(3) If you make timely application for a price increase or benefit allowed under your contract, but the purchaser refuses and you take reasonable measures, which are documented, to force purchaser compliance, you will owe no additional royalties unless or until you receive additional monies or consideration resulting from the price increase. This paragraph (f)(3) will not be construed to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in